

No. 46873-5-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

MARQUEZE SAVON BROUSSARD APPLETON,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 13-1-04996-3
The Honorable Frank Cuthbertson, Judge

OPENING BRIEF OF APPELLANT

STEPHANIE C. CUNNINGHAM
Attorney for Appellant
WSBA No. 26436

4616 25th Avenue NE, No. 552
Seattle, Washington 98105
Phone (206) 526-5001

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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it accepted Markeze Appleton's guilty plea without adequately determining whether he understood the nature of the charges to which he was pleading.
2. The trial court erred when it found that a factual basis existed in the record to support Markeze Appleton's guilty plea to second degree assault.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Where the crime of second degree assault requires proof that the victim suffered "substantial bodily harm," and where the court failed to determine if Markeze Appleton understood this requirement, did the trial court err when it found that Appleton understood the nature of the charge and when it accepted Appleton's guilty plea? (Assignment of Error 1)
2. Where the crime of first degree assault requires proof that the defendant intended to inflict "great bodily harm," and where the court failed to determine if Markeze Appleton understood this requirement, did the trial court err when it found that Appleton understood the nature of the charge and when it accepted Appleton's guilty plea? (Assignment of Error 1)

3. Did the trial court err when it found that a factual basis existed in the record to support Marqueze Appleton's guilty plea to second degree assault, where the facts presented at the plea hearing do not establish that the victim suffered "substantial bodily harm?" (Assignment of Error 2)

III. STATEMENT OF THE CASE

The State charged Marqueze Savon Broussard Appleton by Information with one count of first degree assault (RCW 9A.36.011(1)(a)), and alleged the offense was a domestic violence incident committed while armed with a firearm (RCW 10.99.020, RCW 9.94A.530, .533). (CP 1-2) Appleton subsequently pleaded guilty to an Amended Information charging one count of second degree assault (RCW 9A.36.021(1)(a)) and one count of first degree assault (RCW 9A.36.011(1)(a)), both committed against Roosevelt Ports. (CP 39-40, 47-56; 07/16/14 RP 5)¹ The State alleged that Appleton committed second degree assault when he intentionally assaulted Ports and recklessly inflicted substantial bodily harm, and that he committed first degree assault when, with intent to cause great bodily harm, he assaulted Ports with a firearm. (CP 39-40)

¹ The transcripts will be referred to by the date of the proceeding.

Following a colloquy with Appleton, the trial court found that Appleton's plea was made knowingly, intelligently and voluntarily, and the court accepted the guilty plea. (07/16/14 RP 6-11) Appleton subsequently filed a motion to withdraw his guilty plea, asserting that his plea was involuntary because he received ineffective assistance of trial counsel. (CP 69-72, 73-75) Appleton asserted that his attorney did not adequately communicate with him before the plea hearing, and that when counsel did communicate with him about the plea, Appleton felt pressured, coerced and threatened into making an immediate decision. (CP 73-75; 10/24/14 RP 10) The trial court denied Appleton's request for an evidentiary hearing on the matter, and denied his motion to withdraw his plea. (10/24/14 RP 4-5, 9-10)

The trial court imposed a standard range sentence totaling 184 months, and imposed only mandatory legal financial obligations. (10/24/14 RP 13; CP 83, 84, 86) This appeal timely follows. (CP 93-94)

IV. ARGUMENT & AUTHORITIES

Washington's court rules set forth the requirements for the acceptance of a guilty plea:

The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and

the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

CrR 4.2(d) (emphasis added). Due process also requires that a guilty plea be knowing, intelligent and voluntary. In re PRP of Hews, 108 Wn.2d 579, 590, 741 P.2d 983 (1987); Henderson v. Morgan, 426 U.S. 637, 644-45, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976).

A guilty plea is invalid if it is made without “an understanding of the nature of the charge”. CrR 4.2(d). A guilty plea is not truly voluntary “unless the defendant possesses an understanding of the law in relation to the facts.” In re PRP of Keene, 95 Wn.2d 203, 209, 622 P.2d 360 (1980) (quoting McCarthy v. United States, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969)). “Due process requires that a defendant be apprised of the nature of the offense in order for a guilty plea to be accepted as knowing, intelligent, and voluntary. Real notice of the nature of the charge is ‘the first and most universally recognized requirement of due process.’” State v. Osborne, 102 Wn.2d 87, 92-93, 684 P.2d 683 (1984) (quoting Henderson, 426 U.S. at 645). “At a minimum, ‘the defendant would need to be aware of the acts and the requisite state of mind in which they must be performed to constitute a crime.’” Osborne, 102 Wn.2d at 93 (quoting Keene, 95 Wn.2d at 207).

For example, in State v. Powell, 29 Wn. App. 163, 627 P.2d 1337 (1981), this Court set aside the guilty plea of a defendant charged with first degree murder. There, the only factual basis made on the record at the time the plea was taken was the defendant's statement taken from his statement on plea of guilty pursuant to CrR 4.2. The defendant admitted, "I did participate in the 1 (degree) murder of Charles Allison." 29 Wn. App. at 165. This Court noted that during the colloquy between the trial judge and the defendant, no attempt was made to orally elicit a description of the defendant's acts or state of mind which resulted in the charge to which he pleaded. 29 Wn. App. at 167. In addition, the Court found the defendant's written statement to be a mere conclusion of law which failed to set forth any of the elements from which a jury could have found him guilty of first degree murder. 29 Wn. App. at 167.

Similarly, in this case, the record does not establish that Appleton understood the nature of the crimes to which he pleaded guilty or the facts the State would have to prove for a jury to find him guilty. Appleton pleaded guilty to two counts of assault as charged in the Amended Information. (CP 39-40, 47-56) For count one, the State alleged that Appleton committed second degree assault under RCW 9A.36.021(1)(a), which requires proof that the defendant

“Intentionally assault[ed] another and thereby recklessly inflict[ed] substantial bodily harm.” (CP 39) For count two, the State alleged that Appleton committed first degree assault under RCW 9A.36.011(1)(a), which requires proof that the defendant assaulted another person “with intent to inflict great bodily harm[.]” (CP 39) Thus, a conviction for second degree assault requires proof of substantial bodily harm, and a conviction for first degree assault requires proof of intent to inflict great bodily harm.²

Both “substantial bodily harm” and “great bodily harm” are specifically defined by statute. “‘Substantial bodily harm’ means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part[.]” RCW 9A.04.110(4)(b). And great bodily harm is defined as “bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ[.]” RCW

² See State v. Hayward, 152 Wn. App. 632, 645, 217 P.3d 354 (2009); (State has burden of proving the element of reckless infliction of substantial bodily harm); State v. Wilson, 125 Wn.2d 212, 218, 883 P.2d 320 (1994) (“Assault in the first degree requires a specific intent” to cause great bodily harm.).

9A.04.110(4)(c). The term great bodily harm “encompasses the most serious injuries short of death.” State v. Stubbs, 170 Wn.2d 117, 128, 240 P.3d 143 (2010).

There is nothing in the record to show that Appleton understood these requirements. When asked in his Statement of Defendant on Plea of Guilty to list what he did to make him guilty of the crime, Appleton writes:

On 8/19/13 in Pierce County, WA, I intentionally assaulted Roosevelt Ports, thereby recklessly inflicting substantial bodily harm on Roosevelt Ports.
On 12/17/13 in Pierce County, WA, I, with intent to inflict great bodily harm, intentionally assaulted Roosevelt Ports with a firearm.

(CP 55) At the hearing, the trial court did not inquire into whether Appleton understood what constitutes substantial bodily harm or great bodily harm. The only discussion about the elements of the crimes was when the trial court asked Appleton, “Did [trial counsel] explain the legal elements of assault in the first degree and the legal elements of assault in the second degree?” (07/16/14 RP 8) Appleton answered with a simple “Yes.” (07/16/14 RP 8)

Neither the prosecutor nor the judge recited any additional facts or explained the meaning of these elements. And neither the prosecutor nor the judge mentioned the “substantial bodily harm” or

the “great bodily harm” requirements.

Simply reciting the elements of the crime and asking if Appleton understood the charges, and Appleton’s one word response, does not show that Appleton truly understood the nature of the allegations, and the elements the State was required to establish before he could be convicted. See State v. S.M., 100 Wn. App. 401, 415, 996 P.2d 1111 (2000) (the defendant’s “simple ‘yes’ response to the court’s oral question about the meaning of sexual intercourse” is not adequate).

Accordingly, “the record does not affirmatively show that” Appleton “understood the law in relation to the facts or entered the plea intelligently and voluntarily,” and the trial court erred when it accepted Appleton’s guilty plea. S.M., 100 Wn. App. at 415.

In addition to requiring that a guilty plea be made “voluntarily, competently and with an understanding of the nature of the charge”, CrR 4.2(d) provides that “[t]he court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.” The factual basis requirement obligates the judge, before accepting the guilty plea, to determine that the defendant’s conduct “constitutes the charged offenses.” In re Crabtree, 141 Wn.2d 577, 585, 9 P.3d 814 (2000). The factual basis required by CrR 4.2(d)

must be developed on the record at the time the plea is taken. Keene, 95 Wn.2d at 210.

The factual basis need not be established from the defendant's admissions; any reliable source may be used, so long as the material relied upon by the trial court is made a part of the record. Keene, 95 Wn.2d at 210 n. 2. In this case, the trial court relied upon the Declaration for Determination of Probable cause filed with the Amended Information. (07/16/14 RP 11; Attached in Appendix) However, there are no facts in that document that show that Ports suffered "substantial bodily harm" from the assault charged in count 1. The Declaration states that Ports was stabbed by Appleton and suffered a "puncture wound to his left chest just outside of the nipple. The puncture wound appeared to be approximately ½ inch long." (CP 41) There is no other mention of the wounds or injuries sustained by Ports as a result of this incident. A puncture wound approximately ½ inch long is does not rise to the level of a "temporary but substantial disfigurement, or . . . temporary but substantial loss or impairment of the function of any bodily part or organ, or . . . a fracture of any bodily part[.]" RCW 9A.04.110(4)(b).

The facts contained in the Declaration do not establish that Ports suffered "substantial bodily harm," which is required to sustain

a conviction for second degree assault. The trial court therefore erred when it found a factual basis in the record to support Appleton's plea to second degree assault.

V. CONCLUSION

"[F]ailure to comply fully with CrR 4.2 requires that the defendant's guilty plea be set aside and his case remanded so that he may plead anew." Wood v. Morris, 87 Wn.2d 501, 511, 554 P.2d 1032 (1976). The trial court here failed to comply with CrR 4.2 or with due process standards because it did not ensure that Appleton understood the full nature of the assault charges or the facts necessary to prove those charges. Furthermore, the facts presented to the trial court at the plea hearing do not contain evidence to establish the essential elements of second degree assault. Appleton's convictions should be vacated and his case remanded to the trial court for a new plea hearing.

DATED: March 30, 2015



STEPHANIE C. CUNNINGHAM

WSB #26436

Attorney for Markeze S. B. Appleton

CERTIFICATE OF MAILING

I certify that on 03/30/2015, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Marqueze S. B. Appleton # 378270, Washington State Penitentiary, 1313 North 13th Avenue, Walla Walla, WA 99362.

Stephanie Cunningham

STEPHANIE C. CUNNINGHAM, WSBA #26436

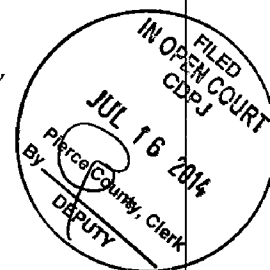
APPENDIX

DECLARATION FOR DETERMINATION OF PROBABLE CAUSE



13-1-04996-3 42926795 ADPC 07-17-14

COURT OF WASHINGTON FOR PIERCE COUNTY



STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-04996-3

vs.

MARQUEZE SAVON B APPLETON,

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE

Defendant.

JAMES H. CURTIS, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the TACOMA POLICE DEPARTMENT, incident number 133511293;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 17th day of December, 2013, the defendant, MARQUEZE SAVON B APPLETON, did commit the following:

On August 19, 2013, Tacoma Police Officers were dispatched to 8246 S. G St, Tacoma, Washington to investigate a reported stabbing incident. Officers Tel Thompson and Dustin Myhre responded to the location, but dispatch informed them that the victim had driven to 6839 S. J St, Tacoma, Washington in a gold Chevrolet Tahoe SUV. As they arrived, they observed the victim, Roosevelt Ports, exiting the Tahoe wearing a blue sleeveless shirt and dark gray basketball shorts. Mr. Ports took his shirt off and Officer Thompson observed a puncture wound to his left chest just outside of the nipple. The puncture wound appeared to be approximately 1/2 inch long. Mr. Ports also had a lump and small cut at the top of his forehead about his left eyebrow, which appeared to have come from physically fighting.

Officer Thompson attempted to ascertain the details that led to Mr. Port's injuries but Mr. Ports was noncommittal and evasive. Mr. Ports stated that he had been in the neighborhood when a male confronted him that the male produced a knife, and he ran. Mr. Ports stated that the person who stabbed him was a friend of "Marquez," the defendant, but refused to provide any information about the defendant. Mr. Ports stated that the defendant did not stab him. Mr. Ports refused to accept medical treatment and assistance from paramedics. However, Mr. Ports began to vomit and informed officers that he was willing to accept treatment and transportation to the emergency room.

Officer Joshua White was also at the scene and contacted Chrisma Crumpton. Ms. Crumpton indicated that she had been dating the stabbing victim, Mr. Ports and that he contacted her immediately prior to the incident. Ms. Crumpton stated that the defendant was upset with Mr. Ports after he walked in on Mr. Port and his Mother, Dorothy Appleton, having sex. Ms. Crumpton drove directly to the area of 84th and Park St where the defendant's mother lived.

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

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7/18/2014

1 Upon arriving, she observed the defendant and Mr. Ports "tussling in the street" but did not see a
2 knife. After they separated, Mr. Ports started to leave, but then asked her to drive because he
3 believed that he had been stabbed. She then drove him back to her house, where they were
4 contacted by police. Because Mr. Ports did not cooperate with the investigation and refused to
5 identify the person who stabbed him, no suspect was confirmed.

6 On December 17, 2013, at about 10:26 p.m., Tacoma Police Officers Zachary Spangler,
7 Dean Waubanasum and Jared Williams were patrolling the south end of Tacoma when they
8 were dispatched to a shooting at 6839 South J St. Cherise Matson had reported that Mr. Ports
9 had been shot in the back and he was driving to 6839 South J St. Officer arrived and observed a
10 black Kia Forte parked with Mr. Ports sitting in the driver's seat. Mr. Ports reported that he had
11 been shot in the back while parked outside a friend's residence. Specifically, he was setting in
12 his car with Ms. Matson, in front of her residence located at 67th and Madison. The Tacoma
13 Fire Department (TFD) had arrived and began providing aid to Mr. Ports. TFD removed Mr.
14 Ports from the vehicle and removed his shirt. Officer Spangler observed a bullet hole on the
15 lower left side of Mr. Ports' back. Mr. Ports was transported to St. Joseph's hospital.

16 Ms. Crumpton was also at the scene at the time of officers arrived. Officer Williams
17 contacted Ms. Crumpton questioned her about the shooting. Ms. Crumpton stated that the
18 defendant, Marquez Appleton, shot Mr. Ports. Ms. Crumpton pointed out a bullet hole in the
19 back trunk of the vehicle Mr. Ports had been driving. Officer Williams observed that the
20 trajectory of the bullet hole to the back of the Kia was consistent with the bullet wound suffered
21 by Mr. Ports.

22 Officer Zachary Wolfe contacted Diamisha Appleton at the scene and questioned her
23 about the shooting. Diamisha Appleton is the defendant's brother. Diamisha stated that Mr.
24 Ports told her that the defendant had shot him. Diamisha responded by immediately calling the
25 defendant on his cell phone and telling him that he was going to prison for shooting Mr. Ports.
26 Diamisha stated that the defendant denied being in the area and hung the phone up.

27 Officer Robert DeNully contacted Ms. Matson at her residence located at 6719 S.
28 Monroe St. Apt. A, Tacoma, Washington. Officer DeNully observed that Matson was "scared"
29 but provided the best account that she could. Ms. Matson was later interviewed by Detective
30 Brian Vold. Ms. Matson stated that she and Mr. Ports had been sitting inside his vehicle outside
31 her residence. She stated that a blue Chevrolet Corsica had parked behind her vehicle and three
32 black males exited. She later admitted that one of the males was the defendant. Ms. Matson
33 stated that the defendant approached the vehicle and opened the driver's side door. Immediately,
34 the defendant produced a semi-automatic pistol and began threatening to shoot Mr. Ports. The
35 defendant told Mr. Ports that he had warned the defendant to stay out of his hood and that he was
36 now going to shot Mr. Ports.

37 Ms. Matson stated that she continued to plead with the defendant but the defendant
38 continued to threaten Mr. Ports. Ms. Matson then told the defendant that they were going to
39 drive off and the defendant responded by threatening to shoot her if she did not exit the vehicle.
40 At some point, Ms. Matson exited the vehicle and Mr. Ports backed his vehicle up and began to

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DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -2

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

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7/19/2014

1 drive down the alley. Ms. Matson indicated that she observed the defendant and two other black
2 males firing pistols at Mr. Ports' vehicle. Ms. Matson stated that she ran inside of her home.

3 Ms. Matson stated that she has known the defendant for months and that the defendant
4 and Mr. Ports used to be friends. Ms. Matson stated that the defendant is Mr. Ports' nephew
5 because Mr. Ports' brother is the father of the defendant's sister, Diamisha D. Appleton. Ms.
6 Matson also told officers that the defendant and Mr. Ports' relationship deteriorated when the
7 defendant walked in on Mr. Ports having sex with his mother. Ms. Matson said that during a
8 prior conversation with the defendant, he admitted to stabbing Mr. Ports after catching him
9 having sex with his mother. Ms. Matson finally selected the defendant as the shooter in a
10 photomontage.

11 Mr. Ports was interviewed by Detective Vold. Mr. Ports gave a nearly identical
12 statement as provided by Ms. Matson. He stated that he was inside his vehicle with Ms. Matson
13 at about 10:00 p.m., the defendant drove up, opened his door, and began threatening to shoot
14 him. He stated that he and Ms. Matson attempted to plead with the defendant to no avail. He
15 stated that as Ms. Matson exited the front passenger door, he backed the vehicle up and
16 attempted to drive down the alley. At that point, Mr. Ports recalled watching the defendant
17 shooting at his vehicle and the defendant two friends shooting.

18 Mr. Ports stated that the events that led up to the shooting began when the defendant had
19 walked in on him and the defendant's mother having sex. Mr. Ports recalled that he had been at
20 Dorothy Appleton's residence and was inside of her bedroom when the defendant kicked in the
21 door. Mr. Ports stated that he was attempting to pull up his pants when the defendant struck his
22 own mother and began to pursue him. Mr. Ports stated that he feared that the defendant was
23 armed and decided to run inside the bathroom. Mr. Ports called Ms. Crumpton while hiding and
24 then exited the residence through a window. Mr. Ports stated that he had been confronted by the
defendant in the street and the defendant attacked him. Mr. Ports stated that at that time, the
defendant stabbed him with a knife like object. Mr. Ports claimed that he refused to cooperate
with the stabbing investigation because he feared retaliation for being a "snitch." Mr. Ports
decided to cooperate during this investigation, because he believed that the defendant was going
to kill him.

On December 24, 2013, the Tacoma Police Department issued a special bulletin for the
arrest of the defendant for the shooting of Mr. Ports. On December 27, 2013, Tacoma Police
Officer Jared Williams received information from a confidential source that the defendant was
residing in the area of 66th & Tyler. The Tacoma gang unit set up surveillance in that area in an
attempt to arrest the defendant. At approximately 10:45 p.m., officers observed the defendant in
the area and the defendant fled on foot into a residence located at 6441 S. Tyler. Officers
contained the residence. After a period of negotiations, at 11:11 p.m., the defendant was taken
into custody.

Officer Williams read the defendant his Miranda warnings and informed him that
Detective Vold wanted to interview him. The defendant waived his rights and agreed to speak.
The defendant admitted that his sister called him the night of the shooting but he denied being
involved. The defendant interview was later terminated. The defendant's cell phone

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -3

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7/18/2014

1 (206.234.8184) was placed in the property room and search warrants were obtained for the
 2 purposes of requesting records. The cell phone warrants were granted and the records were
 3 collected. Based on the defendant's cell phone records, approximately six minutes after the
 shooting, the defendant received a call from Diamisha Appleton. The cellular towers show that
 the defendant phone was located less than six blocks away from scene of the shooting.

4 The Pierce County Jail operates a system called "Secure Call Platform," which records all
 5 inmate telephone calls made from the jail. Upon being booked in the jail, each inmate is issue a
 6 unique pin number to make phone calls. During the first phone call, the inmate is required to
 identify himself and utilize the pin. The defendant was issued a pin and provided his name as a
 7 personal greeting. The defendant attempted to make over 700 telephone calls while in the Pierce
 8 County Jail (not all of these calls were completed). The defendant made a series of statements
 regarding the facts involved in this case and attempted to tamper with testimony and destroy
 evidence.

9 On December 28, 2013, the defendant made a call while being held in booking. The
 10 defendant stated, "they got me" and directed a person to tell Mr. Ports "tell him I already regret
 doing what I did and I shouldn't have to spend the rest of my life in jail to prove it." On
 11 December 30, 2013, the defendant was recorded telling a woman to talk to Mr. Ports about not
 appearing for court and having Mr. Ports to call the prosecutor to drop the charges.

12 Later that same day, the defendant was recorded telling a woman not to touch the car and
 13 that the car may be "under investigation." He also stated, "we need to get my car from Avery
 (Robinson) and have it turned to a junk yard. The defendant added that the car needed to be
 14 "cleaned up" and "wiped down." On January 1, 2014, the defendant was recorded ordering a
 15 woman to smash the windshield of his car, so that the vehicle would be towed. During this call,
 16 the defendant continued to stress the importance of getting his car towed. On January 3, 2014,
 the defendant was recorded during a jail visit discussing the fact that his car had just been towed
 and that it was going to get smashed. After confirming that his car was smashed, he told the
 visitor to find out if Mr. Ports was going to testify at trial. The defendant asserted that if Mr.
 Ports "do not make it to court or something like that I put it on everything, they have to
 drop my case."

17 On February 5, 2014, the defendant was recorded telling a witness, Averie Robinson, to
 18 tell his investigator that they sold the car prior to the shooting. The defendant explained that she
 should say that he sold the vehicle at a gas station but no paperwork was retained. On February
 19 13, 2014, the defendant was recorded telling Averie Robinson that it was important that her and
 her mother's stories match his at trial. He also prepped her regarding his story about selling the
 20 vehicle prior to the shooting and not having any paperwork to prove it.

21 The defendant's jail recordings demonstrate a concerted effort to attempt to influence the
 22 testimony of Mr. Ports, Averie Robinson and her family. The defendant's jail recordings also
 establish that he instructed individuals to have his Chevrolet Corsica towed and destroyed
 23 because he feared that it was under investigation.

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DECLARATION FOR DETERMINATION
 OF PROBABLE CAUSE -4

Office of the Prosecuting Attorney
 930 Tacoma Avenue South, Room 946
 Tacoma, WA 98402-2171
 Main Office (253) 798-7400

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7/18/2014

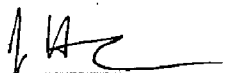
1 On June 28, 2014, Mr. Ports received an email on Facebook from the defendant's mother,
2 Dorothy Richardson (aka "Dorothy Appleton"). The email stated:

3 "Hey I don't know if [D]iamisha called you like [I] told her to yesterday but she was
4 supposed to call you and tell you that the court issued a bench warrant for you yesterday
5 and they only have until Tuesday to find you and this is over. I know that I love you and
6 I never want to see anything bad happen to you I don't judge you about anything because
7 I long ago excepted you as you are [I] owe you a lot and I will be forever grateful to you
8 and in your debt."

9 The defendant is a convicted felon and is prohibited from possessing a firearm
10 (Attempted Unlawful Delivery of Material in Lieu of Controlled Substance, Possession of a
11 Stolen Firearm, Theft in the First Degree, Assault in the Third Degree)

12 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
13 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

14 DATED: July 15, 2004
15 PLACE: TACOMA, WA

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17 _____
18 JAMES H. CURTIS, WSB# 36845

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DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -5

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

CUNNINGHAM LAW OFFICE

March 30, 2015 - 1:57 PM

Transmittal Letter

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Court of Appeals Case Number: 46873-5

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Statement of Additional Authorities

Cost Bill

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Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

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Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

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